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PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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CC Docket No. 92-166 /

Released: August 7, 1992

FCC ASKS FOR COMMENTS REGARDING THE ESTABLISHMENT OF AN ADVISORY COMMITTEE TO NEGOTIATE PROPOSED REGULATIONS

1. The Commission is considering establishing an Advisory Committee to negotiate regulations defining the technical rules appropriate to the provision of mobile-satellite services (MSS) in the 1610-1626.5 MHz and 2483.5-2500 MHz frequency bands subject to the adoption of a Report and Order allocating this spectrum for MSS services in ET Docket No. 92-28. The negotiations are to assist the Commission in developing regulations that will facilitate the shared use of this spectrum by the maximum number of MSS providers. Any negotiating committee would be created under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and the Negotiated Rulemaking Act of 1990 (NRA), Pub. L. 101-648, November 28, 1990, and would consist of representatives of the interests that will be significantly affected by the outcome of these rules.

2. The Commission has recently proposed to reallocate the 1610-1626.5/2483.5-2500 MHz frequency bands to MSS on a co-primary basis with other allocated services in those bands. Notice of Proposed Rulemaking, FCC 92-358 (adopted August 5, 1992). This domestic allocation would conform with the international allocation that was made at the World Administrative Radio Conference, 1992 (WARC-92). Six applications have been filed seeking authority to construct and launch MSS systems in these bands. Five applicants propose low-Earth orbit (LEO) systems; one proposes a geostationary-satellite orbit (GSO) system. The only domestic user in the bands is the National Academy of Sciences, which provides radio astronomy service in the 1610.6-1613.8 MHz band segment on a secondary basis. Geostar Positioning Corporation (Geostar) is authorized to implement a radiodetermination satellite service (RDSS) system in the entire bandwidth, but the system has not been built and Geostar is in the liquidation phase of bankruptcy.

I. REGULATORY NEGOTIATION

3. Regulatory negotiation is a technique through which the Commission hopes to develop better regulations that may be implemented in a less adversarial setting. Negotiations are conducted through an Advisory Committee chartered under FACA. The goal of the Committee is to reach consensus on the language or substance of appropriate rules. If a consensus is reached, it is used as the basis of the Commission's proposal. If a consensus is not reached, majority and minority input may be used by the Commission in ultimately proposing regulations. All procedural requirements of the Administrative Procedure Act (APA) and other applicable statutes continue to apply.

4. When making a determination regarding the suitability of a proceeding for the negotiated rulemaking process, the Commission must consider whether:

- (a) there is a need for the rule,
- (b) there are a limited number of identifiable interests that will be significantly affected by the rule,
- (c) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who (1) can adequately represent the identifiable interests and (2) are willing to negotiate in good faith to reach a consensus on the proposed rules,
- (d) there is a reasonable likelihood that a committee will reach a consensus on the proposed rules within a fixed period of time,
- (e) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of final rules,
- (f) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee, and
- (g) the agency will, to the maximum extent possible consistent with the legal obligations of the agency, use the consensus of the committee with respect to the proposed rules as the basis for the rules proposed by the agency for notice and comment. NRA § 3, 5 U.S.C. §583(a).

II. SUBJECT AND SCOPE OF RULE PROPOSED FOR NEGOTIATED RULEMAKING

5. The Commission is proposing that the technical regulations to govern the provision of MSS in the 1610-1626.5/2483-2500 MHz frequency bands be developed through negotiation. We believe that the selection criteria listed above are met. Technical regulations are needed to establish and govern this service, should we adopt the allocations proposed in the NPRM, supra, in a manner that maximizes use of the spectrum and protects existing users from harmful interference. Affected interests are relatively small in number and these interests are likely to be adequately represented on any negotiating committee. Further, while we recognize that several of the applicants' proposed systems may be technically incompatible, we believe it is reasonably likely that the Committee could reach a consensus with respect to sharing criteria in a reasonable amount of time. We will use the consensus of the Committee as the basis for our rules to the extent possible. Nonetheless, if a consensus cannot be achieved, the majority and minority input will be considered by the Commission and will serve to expedite the issuance of a notice of proposed rulemaking and a final order. Finally, the Commission has adequate resources to devote to the negotiations.

6. The Commission has identified the following issues that should be addressed in the negotiations and incorporated in the proposed rules developed by the Committee:

- (a) what technical rules should be adopted for this service so as to maximize the sharing of the spectrum and the capacity for multiple entry, and
- (b) what technical rules should be adopted in order for this service to co-exist with other allocated services.

Other issues may be included by the parties. All proposals must comply with International Telecommunication Union (ITU) treaty obligations.

III. POTENTIAL INTERESTS AND PARTICIPANTS

7. The Commission has identified the following interests as those likely to be significantly affected by the MSS service rules:

- (a) applicants to provide MSS in the affected bands, and
- (b) existing users of the bands.

8. The following have initially been identified as potential interests should the Commission proceed with a negotiated rulemaking: American Mobile Satellite Corporation, Constellation Communications, Inc., Ellipsat Corporation, Loral Cellular Communications, Inc., Motorola Corporation, TRW, Inc., the National Academy of Sciences, and the Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission.

IV. FORMATION OF THE NEGOTIATING COMMITTEE

A. Procedure for Establishing an Advisory Committee

9. Under FACA, an Advisory Committee may be established only after consultation with the General Services Administration (GSA) and the filing of a charter. The Commission will prepare a charter and initiate the requisite consultation process prior to formation of the Committee and the commencement of negotiations.

B. Participants

10. The number of participants in the group is estimated to be about 12 and should not exceed 25. A number larger than this could make it difficult to conduct efficient negotiations. Each interest will have the opportunity to be adequately represented, although this does not necessarily mean that each potentially affected entity will have its own representative. Further, we must be satisfied that the group, as a whole, reflects a proper balance and mix of interests.

11. Entities that will be significantly affected by the proposed rules and which believe that their interests will not be adequately represented by any entity specified in paragraph 8 above, may apply for, or nominate another entity for, membership on the Committee. Each application for nomination must include:

- (a) the name of the applicant or nominee and a description of the interests the entity will represent,
- (b) evidence that the applicant or nominee is authorized to represent parties related to the interests the entity proposes to represent,
- (c) a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rules under consideration,
- (d) the reasons that the entities specified in paragraph 8 do not adequately represent the interests of the entity submitting the application or nomination.

12. If, in response to this Notice, any additional entities request membership or representation in the negotiating group, the Commission will determine whether that entity should be added to the group. The Commission will make that decision based on whether the entity would be substantially affected by the rule and whether that entity is already adequately represented in the negotiating group.

C. Agenda

13. If the Commission decides to establish a negotiating committee and its charter is approved, it is expected that the Committee's first meeting will take place in November 1992, at the Commission's offices, Washington, D.C., at a building, room, date, and time that will be announced. At this initial meeting, the committee will complete action on all procedural matters and establish a target date for submission of its recommendations. We expect that the target date would be no later than March 1, 1993. We anticipate publication of a notice of proposed rulemaking not later than May 1993.

V. NEGOTIATION PROCEDURES

14. The following procedures and guidelines will apply to the Committee, if formed. These procedures may be modified, however, after reviewing the comments received in response to this Notice or during the negotiation process.

A. Facilitator

15. The Commission will nominate a person to serve as a neutral facilitator for the negotiations of the Committee, subject to the approval of the Commission by consensus. The facilitator will not be involved in the substantive development of the regulations. The facilitator's roles are to (1) chair negotiating sessions, (2) help the negotiation process run smoothly, (3) help participants define and reach a consensus, and (4) manage record-keeping and minute-keeping.

B. Good Faith Negotiations

16. Each organization -- including the Commission -- must designate a qualified individual to represent its interests. Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Common Carrier Bureau, will be the Commission's representative.

C. Meetings and Compensation

17. Meetings will be held in the Washington, D.C. area at the convenience of the Committee. The Commission, if requested, will provide the facilities needed to conduct the meetings, and will provide any necessary technical support. Private sector members of the Committee will serve without government compensation or reimbursement of expenses. Private sector members will not be special government employees for any purposes whatsoever.

D. Committee Procedures

18. Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the procedures for committee meetings that they consider most appropriate.

E. Consensus

19. The goal of the Committee is consensus. We expect the participants to fashion their own working definition of this term. In the event the Committee is unable to reach a consensus, majority and minority reports may be submitted and the Commission will develop its own approach. Parties to the negotiation may withdraw at any time. If this happens, the remaining committee members and the Commission will evaluate whether the Committee should continue.

F. Record of Meetings

20. Pursuant to FACA, the Committee will keep a record of all committee meetings. This record will be placed in the public docket for this rulemaking. The Commission will announce committee meetings in the Federal Register. These meetings will be open to the public.

VI. CONCLUSION

21. The Commission requests public comment on whether: (1) it should establish a Federal Advisory Committee, (2) it has properly identified the interests that are significantly affected by the key issues listed above, (3) the proposed committee membership reflects a balanced representation of these interests, and (4) regulatory negotiation is appropriate for this rulemaking.

22. Pursuant to the applicable procedures set forth in Section 4(c) of the Negotiated Rulemaking Act of 1990, 5 U.S.C. §584(c), interested parties may file comments and applications for Committee membership on or before September 14, 1992. Comments and/or applications should be sent to the Office of the Secretary, CC Docket No. 92-166, Federal Communications Commission, Washington, D.C. 20554. Comments and applications will be available for public inspection

during regular business hours in the Dockets Public Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

23. For further information pertaining to the establishment of the negotiation committee and associated matters, contact Fern J. Jarmulnek, Satellite Radio Branch, 2025 M Street, N.W., Washington, D.C. 20554, (202) 634-1682.

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